RUSSELL H. GREEN, JR.

IBLA 83-39 Decided June 1, 1984

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting over-the-counter acquired lands oil and gas lease offer CA-12995.

Set aside and remanded.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Discretion to Lease

BLM may, in its discretion, decline to issue an oil and gas lease, pursuant to an over-the-counter offer, where its records do not clearly show that the title to the oil and gas is in the United States. Prior to such action, however, BLM should afford the offeror an opportunity to show that the United States does, in fact, own title to the oil and gas interests in the lands sought to be leased.

APPEARANCES: Russell H. Green, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Russell H. Green, Jr., has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated January 23, 1983, rejecting over-the-counter acquired lands oil and gas lease offer CA-12995. This lease offer, embracing three parcels in T. 2 S., R. 5 E., Mount Diablo meridian, aggregating 4.28 acres, had been filed on November 15, 1982. The State Office decision noted that while the subject land had been acquired by the Bureau of Reclamation (BuRec), it was purchased subject to any outstanding reservations of minerals to third parties, and no determination had been made as to what reservations might exist. Accordingly, the State Office rejected appellant's offer since title to the mineral estate was not clearly shown to be in the United States.

The record discloses that the three parcels involved, together with two others, were acquired from the State of California in 1970 by BuRec for the San Luis Drain Project. The Land Purchase Contract expressly provided that the State conveyed the five parcels "Subject to existing estates, interests and rights in and to coal, oil and gas and any and all other minerals reserved to or outstanding in third parties." It is clear from the response which BLM received from BuRec that no effort was ever made to determine whether any such interests were, in fact, outstanding.

The record clearly supports the statement by the State Office that, from the records held by the United States, the extent of the Government's mineral interests cannot be ascertained. Appellant's simple assertion to the contrary must be rejected. However, we believe it was error for the State Office to reject the offer without first affording appellant an opportunity to show that the United States does own the oil and gas rights in the subject tracts.

While it is true that normally the United States will not issue oil and gas leases where its title to the mineral estate is not clear, 1/ it is also true that an offeror should be given an opportunity to show that title to the oil and gas is in the United States. Thus, in Jean Oakason, 27 IBLA 41 (1976), this Board noted:

> Where title to a tract of acquired land which is the subject of an oil and gas lease application is in doubt, the burden is on the applicant to search the land records to ascertain the chain of title and establish the eligibility of the tract for leasing. * * * Where the BLM has insufficient title information with respect to mineral title in acquired lands, it may properly require the lease offeror to furnish evidence from the county recorder's office in the nature of a title abstract sufficient to allow the Regional Solicitor to determine the status of title to the oil and gas in the lands for which the lease application was filed. [Citations omitted.]

Id. at 43.

Thus, upon notification by BuRec of the problem, the State Office should have directed appellant to submit evidence from the county recorder's office showing that there were no outstanding mineral interests. Instead, the State Office rejected the instant offer to lease without granting appellant an opportunity to show that there were no mineral interests outstanding. Since the applicant was not afforded such an opportunity, we shall set aside the decision below and remand the case file to the State Office with instructions to afford appellant a reasonable opportunity to supplement the record to establish Federal ownership of the mineral estate in the three tracts.

1/ We would point out, however, that to the extent that the State Office decision was predicated on the view that the Department must reject such offers, the decision is incorrect. As we noted in Georgette B. Lee, 5 IBLA 295 (1972), the issuance of an oil and gas lease by the United States does not constitute a warranty that the United States has title to the oil and gas deposits. Accordingly, in certain circumstances and under certain conditions the Department has authorized issuance of oil and gas leases even though title to the deposits were not clearly shown to be in the United States. See Georgette B. Lee, supra; The California Company, A-28753 (Supp.) (June 3, 1969). In any event, Board decisions affirming rejection of offers because Federal title to either the lands or the mineral interests was in dispute have always emphasized the "discretionary" nature of the action. See e.g., Don Jumper, 24 IBLA 218, 219 (1976); Georgette B. Lee, 10 IBLA 23, 25 (1973).

Should the State Office determine, in consultation with the Regional Solicitor, that title is, in fact, in the United States, it should re-refer the offer to BuRec to obtain its recommendations concerning issuance of the lease and any appropriate stipulations. 2/ Should the State Office determine that title remains unclear, it should consider whether, in light of the small size of the parcels and the fact that appellant may hold leases on all adjacent acreage, this is an appropriate case for issuance of a lease under the conditions provided for in Georgette B. Lee, 5 IBLA 295 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case files are remanded for further action consistent herewith.

James L. Burski
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

2/ In this regard, we would note that appellant has already indicated his willingness to accept a no surface occupancy stipulation.